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24 Hour Fitness USA, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT
OAKLAND DIVISION

24 Hour Fitness USA, Inc.,

Plaintiff,

vs.

Apex Stores, LLC; Apex, LLC; Apex at
Home, LLC,

Defendants.

No. CV 08 1681 SBA

**STIPULATION AND [PROPOSED]
ORDER TO CONTINUE CASE
MANAGEMENT CONFERENCE AND
EXTEND RELATED DEADLINES**

[N.D. Local Rule 16-8; 16-9; 16-10]

Plaintiff 24 Hour Fitness USA, Inc. ("24 Hour Fitness" or "Plaintiff") and Defendants Apex Stores, LLC, Apex, LLC and Apex at Home, LLC ("Defendants") hereby file this Stipulation to continue the Case Management Conference and extend the time for the parties to file their Joint Case Management Statement and ADR-related certifications and fulfill their other related pre-Case Management Conference obligations.

WHEREAS, on March 27, 2008 this Court issued an Order Setting Initial Case Management Conference and ADR Deadlines;

1 WHEREAS, on June 3, 2008 Plaintiff filed a First Amended Complaint in this action;

2 WHEREAS, on June 10, 2008, after reassignment of this case to the Honorable Sandra
3 Brown Armstrong, this Court issued a Case Management Scheduling Order for Reassigned Civil
4 Cases, which provided that all dates listed in the Order Setting Initial Case Management
5 Conference shall remain in effect except the Case Management Conference itself, which was
6 rescheduled to July 17, 2008;

7 WHEREAS, on June 19, 2008 this Court Ordered that Defendants shall have to and
8 including June 30, 2008 in which to answer or otherwise respond to Plaintiff's First Amended
9 Complaint, and stated that any motion filed by Defendants must be served and filed on thirty-five
10 days notice pursuant to Local Rule 7-2(a);

11 WHEREAS, counsel for Defendants has confirmed that it intends to file on or before
12 June 30, 2008 a motion to dismiss the entire action for lack of subject matter jurisdiction and for
13 lack of personal jurisdiction as to two of the three named Defendants;

14 WHEREAS, counsel for Defendants has confirmed that the Court is not available for
15 hearing motions during the month of August, 2008. The earliest possible hearing date on
16 Defendants' anticipated motion to dismiss is thus September 2, 2008. However, it is anticipated
17 that there may be difficulty securing the September 2, 2008 date for hearing given the expected
18 high demand for that date since the Court is not available for hearing motions during the month of
19 August;

20 WHEREAS, on or about May 5, 2008 Defendants Apex, LLC and Apex At Home, LLC
21 filed a Complaint against Plaintiffs in the District of Rhode Island ("Rhode Island action") and
22 contend that such court is the proper forum in which to adjudicate the factual dispute raised in the
23 present action;

24 WHEREAS, on or about June 3, 2008 Plaintiff filed a motion to dismiss or, in the
25 alternative to stay, the Rhode Island action and contend that this court is the proper forum to
26 adjudicate the parties' dispute;

27 WHEREAS, the parties believe it will serve judicial economy and result in cost-savings to
28 the parties to extend the dates for the preparation and filing of the Joint Case Management

1 Statement and the completion of their related pre-Case Management Conference obligations and
2 to continue the Case Management Conference, until after this Court rules upon Defendants'
3 motion to dismiss this case, as it is unclear at the present time whether this dispute shall be
4 litigated between the parties in California or Rhode Island; and

5 WHEREAS, this Stipulation is not proposed for any improper purpose, such as delay,

6 NOW, THEREFORE, it is hereby stipulated and agreed to by the Parties, through their
7 respective attorneys of record, that:

8 1. The Case Management Conference shall be continued to **September 25, 2008 at**
9 **2:30 p.m.**, or such time and date thereafter as is convenient to the Court;

10 2. The last day for the parties to: (a) meet and confer regarding initial disclosures,
11 early settlement, ADR process selection, and the discovery plan; (b) file their respective ADR
12 Certification of Parties and Counsel pursuant to ADR L.R.3-5(b); and (c) file their Joint ADR
13 Certification or Notice of Need for ADR Teleconference pursuant to ADR L.R.3-5(c), shall be on
14 or before **September 11, 2008**; and

15 3. The last day for the parties to file the Rule 26(f) Report, complete initial
16 disclosures and file the Joint Case Management Statement shall be **September 18, 2008**.

1 Dated: June 25, 2008

MANATT, PHELPS & PHILLIPS, LLP

2
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17 *Attorneys for Plaintiff*

18 Dated: June 25, 2008

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28 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, Britt Anderson hereby attests that concurrence in the filing of this document has been obtained.*

PURSUANT TO STIPULATION, IT IS SO ORDERED:

HONORABLE SAUNDRA BROWN ARMSTRONG

DATED: _____